IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6575 OF 2005

Smt.Radha Sheena Shetty .. Applicant
Versus
State of Maharashtra & Ors. .. Respondents

Mr.A.P.Mundergi, Senior Advocate with Mr.Ganesh Gole for applicant
Mr.S.S.Pednekar, A.P.P. for State
Mr.G.Dwivedi i/b. M/s.G.Dwivedi & Co. for respondent No.2.
Mr.S.P.Kadam for respondent No.3.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 29th November 2005.

P.C.

. A serious grievance is made by Mr.Gole, learned Counsel appearing for applicant who is mother of deceased. The deceased is allegedly murdered by respondent Nos. 1 and 3 who are original accused Nos. 1 and 3. C.R. was registered with Santacruz Police Station.

2. The case is that sessions court has specifically rejected bail application preferred by these respondents and the order dated 15th July 2004 in Bail application No.1096 of 2004 is already on record. This Court has only enlarged one of the accused on bail and an order dated 15th December 2004 in Application No.5432 of 2004 is brought to my notice.

3. It is contended that one of the accused (respondent No.2) had moved this Court for bail in Application No.3975 of 2005, filed by him. The same has been rejected by this Court on 29th June 2005. Trial has been expedited.

4. Grievance of Mr.Gole is that when the trial was going on, respondent No.2 as well as 3 applied for bail and their application No.691 of 2005 has been granted by the learned Judge. The order to that effect is passed on 19th August

2005.

5. Grievance made by Mr.Gole is two fold. Firstly, he submits that once application preferred by the accused was rejected on merits and this Court has also found no substance in their case for enlargement on bail, the sessions court was not justified in entertaining the application for identical reliefs midstream and granting bail. That apart, while granting bail all that the learned judge relied upon as alleged changed circumstances, is evidence of P.W.3 Medical Officer. He has referred to the said report and the injuries as well as evidence of the P.W.1 and 2 and has given a prima facie conclusion that the case is not of murder but at the most an offence under section 307of I.P.C. has been committed.

6. Grievance of Mr.Gole is that apart from granting bail, the learned Judge has seriously

erred in observing that no offence is made out under section 302 but only under section 307 of I.P.C. With the assistance of Mr.Gole and Mr.Kadam as well as A.P.P. I have perused the application and the annexures thereto.

7. While it is true that the learned Judge could have entertained an application for bail and also considered the same on the ground of alleged poverty of these accused, it was not permissible for him to have given any opinion when the case is at a delicate stage. Relying only upon version of the prosecution witnesses and commenting upon medical evidence was not at all necessary. Learned Judge should have been careful inasmuch as when the trial is underway any expression of opinion on merits could not have been termed as prima facie, although, learned Judge may say so. The observation is in the light of the evidence led before him.

8. Other grievance of Mr.Gole is equally serious. Considering the fact that now only I.O. is remained to be examined and the trial is now to be concluded and respondent Nos. 2 and 3 are on bail, the observations made during the course of granting bail are set aside and it is directed that the learned Judge shall not be influenced by them in any manner while deciding the case. Learned Judge ought to be careful enough and not make such observations during the course of consideration of grant of bail. More so, when they are made during the pendency of the trial. Application disposed of.

(S.C.DHARMADHIKARI, J)